

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BRIAN P. KELLY,	)
	)
Plaintiff,	)
	)
v.	) No. 08 C 2237
	)
P.O. ADAM STAPLETON, P.O. THOMAS A. ROLAND,)      Judge Joan H. Lefkow	
and P.O. JAMES P. GARRETT, individually,	)
	)
Defendants.	)

**DEFENDANT ROLAND'S MOTION FOR LEAVE TO FILE HIS  
ANSWER AFTER THE RULING ON HIS PARTIAL MOTION TO DISMISS**

Defendant THOMAS ROLAND, by his undersigned attorneys, moves this Court for the entry of an order granting him leave to wait to file his Answer to Count II of the Complaint until after this Court has ruled on his motion to dismiss Count I of the Complaint, and in support thereof, states as follows:

1. On August 15, 2008, Roland filed a motion to dismiss Count I of the Complaint.
2. When a party moves to dismiss certain, but not all, of the counts of a complaint, the court may allow the party to wait to file an answer to the unchallenged counts until the partial motion to dismiss is resolved. *Oil Express Nat'l, Inc. v. D'Alessandro*, 173 F.R.D. 219, 220 (N.D.Ill. 1997). In that situation, a partial motion to dismiss extends the time with respect to answering all claims, even those claims not subject to the motion. *Oil Express Nat'l, Inc.*, 173 F.R.D. at 221; *Fairley v. Andrews*, 300 F. Supp. 2d 660, 670 (N.D.Ill. 2004).
3. The instant case presents a situation where waiting to file an answer will serve the interests of judicial and legal economy.

4. Roland will be able to file his answer within five days after this Court rules on his motion to dismiss Count I. In addition, the parties will be able to proceed with discovery while the motion to dismiss is pending.

5. Accordingly, the temporary lack of an answer from Roland on Count II will not operate to prejudice Plaintiff nor will it cause any undue delay in the progress of this case.

WHEREFORE, Defendant THOMAS ROLAND respectfully requests that this Court enter an order granting him leave to file his Answer to the Complaint within five days after the Court rules on his motion to dismiss Count I of the Complaint.

Respectfully submitted,

THOMAS A. ROLAND

s/ Martin W. McManaman

One of the attorneys for Defendant

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